



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Settlement of Temporary Construction Easements at
4600 Dufferin Street for the York University Busway**

Date:	June 23, 2008
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Ward 8 – York West
Reason for Confidential Information:	This report is about a proposed or pending settlement in the acquisition temporary interest in land by the City or one of its agencies, boards, and commissions.
Reference Number:	P:\2007\Interanal Services\F&re\Gm08068F&re - (AFS 8107)

SUMMARY

This report seeks authority from Council to allow the City to enter into and perform a settlement agreement with a private property owner, Veritas 4590 Dufferin Street Corp. ("Veritas"), as an alternative to further proceeding with an expropriation now underway.

Veritas owns two adjoining properties on the west side of Dufferin Street, north of Finch Avenue known respectively as 4600 and 4590 Dufferin Street (the "Veritas Property"). The Veritas Property adjoins the Hydro One Networks Inc. corridor upon which a major stretch of the joint City/TTC York University Busway (the "Busway") is to be located.

Transportation Services has determined that the existing driveway into the Veritas Property is too close to the intersection on Dufferin Street where transit vehicles will be turning for access to and from the Busway. Consequently, in order to establish the required separation, the City has commenced expropriation proceedings to close the existing Veritas driveway (Part 1 on the attached site map) and build a new driveway farther to the south on the Veritas Property (at Part 2).

Veritas wishes to enter into an agreement that would satisfy all the purposes of the ongoing expropriation except that the new driveway would be constructed at a different but mutually advantageous location.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. Each of the Chief Corporate Officer and the Director of Real Estate Services be authorized severally on behalf of the City, to enter into a settlement agreement with the owner(s) of the Veritas Property for purposes related to constructing a new driveway thereon at a mutually acceptable location, at a cost limit not to exceed the amount set out in confidential Appendix 1, on such terms and conditions as they or their designates may approve, and in a form and content satisfactory to the City Solicitor.
2. City Council authorize the public release of the confidential information in Attachment 1, upon completion of all terms and conditions of the settlement agreement.
3. The City Solicitor be authorized to complete the transactions in the settlement agreement on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and condition, on such terms as she considers reasonable..
4. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

Funding of the proposed settlement is available in Program 3.3 Yards and Roads under Bus Rapid Transit (BRT) – Spadina Subway to York University/Steeles Avenues as identified on pages 665 to 671 – category expansion of the TTC 2008-2012 Capital Program as approved by City Council on December 11, 2007 (Account CTT015).

The cost limit set out in Attachment 1 comprises costs quoted by TTC's general contractor for the Busway project and includes the cost to open and construct a new driveway on Part 2 of the Veritas Property, plus an amount as compensation for the temporary easements to be acquired by expropriation, less an amount attributed to penalty charged by the contractor for removing the driveway construction from the overall construction contract.

The proposed settlement is cost-neutral to the TTC Busway project budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On September 25, 26 and 27, 2006, City Council adopted Clause 33 of Report No. 6 of the Administration Committee, thereby authorizing staff to enter into negotiations to acquire the necessary property interests for the York University Busway Project and to initiate the expropriation process, where necessary and appropriate.

On June 23 and 24, 2008, City Council adopted Report No. GM15.13 of the Government Management Committee, approving the expropriation of temporary construction interests on the Veritas Property for purposes of closing and removing the existing driveway on Part 1 and constructing and opening in its place, a new driveway on Part 2.

ISSUE BACKGROUND

Commencing in September 2006, when City Council authorized negotiations for Busway acquisitions, staff sought to secure mutually agreeable temporary easements from Veritas. In August 2007, when an agreement could not be reached, Notices of Application for Approval to Expropriate temporary easement interests in the Veritas Property were served in accordance with the *Expropriations Act*.

Two days prior to the Notices being served, the Committee of Adjustment (North District) consented to an application by Veritas to sever the Veritas Property into two parcels. The most northerly parcel is now known municipally as 4600 Dufferin Street and the southerly parcel continues under the address 4590 Dufferin Street. The severance also established a mutual right-of-way intended to serve as a common driveway for access to and from Dufferin Street for the respective parcels comprising the Veritas Property. The location of the right-of-way is shown as Part 3 on the attached site map.

Part 3 lies south of the 'expropriation driveway' (meaning the new driveway which under the expropriation proceedings, was proposed for Part 2). A driveway, if located on Part 3, would satisfy and in fact, exceed the minimum separation distance recommended by Transportation Services for the separation of the Busway and the Veritas driveway along Dufferin Street.

If the expropriation now underway proceeds to the stage of taking land, the new Veritas driveway will be constructed on Part 2, against the wishes of Veritas. In order to enable a process for removal of the existing driveway and construction the new driveway at a location mutually satisfying the requirements of the City/TTC and Veritas, Council Authority is required.

In the event that the negotiations with Veritas do not result in a settlement agreement, the planned opening of the Busway for the end of 2008 is assured by the fact that the City's expropriation process will continue to move forward.

COMMENTS

Veritas and staff from the City and TTC have discussed the mutually advantageous possibility of entering into a settlement agreement that would result in the closure of the existing Veritas driveway on Part 1 of the Veritas Property and constructing and opening a new driveway on Part 3 or such other location as will meet or exceed the separation distance recommended by Transportation Services. If such an agreement can be reached, the expropriation now underway would be redundant.

In reaching a settlement agreement with Veritas, City staff will employ as a metric of acceptable terms, the objectives intended to be met through the expropriation process. The following table compares outcomes expected if a settlement agreement can be reached, with those expected from completion of the expropriation process. Under each parameter the settlement agreement is of equal or greater benefit to the City/TTC.

Expropriation Objectives compared with Terms of Settlement		
Issue	Expropriation Objective	Settlement Agreement Terms
1. Existing driveway removal and TTC deadline for opening Busway	Existing driveway on Part 1 is to be closed and removed by scheduled Busway opening, November 1, 2008.	Same.
2. Expropriation process	City will proceed with expropriation to final stage of completion.	Expropriation proceedings can be discontinued.
3. New driveway location - benefits to owner	City/TTC rigidly required to construct new driveway on Part 2 despite owner's objections and reasonable alternatives available.	Owner and City/TTC flexible to agree on mutually satisfactory location for new driveway.
4. New driveway location - benefits to City/TTC	New driveway to be constructed on Part 2 will meet City's required minimum separation distances.	New driveway to be constructed at mutually agreeable location, meeting or exceeding City's minimum separation requirements.
5. Owner's claims for injurious affection	Owner retains statutory rights to claims under <i>Expropriations Act</i> .	Owner to give both City and TTC a partial or even full release of claims effective on completion of settlement terms.
6. Costs of existing driveway removal and new driveway construction	Costs for removal and construction of driveway are set out in Attachment 1.	Maximum costs to complete settlement will not exceed the amount in Attachment 1.

As a settlement agreement incorporating the above terms may be reached during the summer recess of Council meetings and as closing the existing driveway at the earliest opportunity will ensure this matter will not delay the Busway opening, Council authority is sought to enter into the proposed settlement.

CONTACT

Joe Casali, Director of Real Estate Services; Tel: (416) 392-7202; Fax: (416) 392-1880;
E-Mail: jcasali@toronto.ca

Domenic Garisto, Manager, Property Development; TTC; Tel: (416) 393-6536; Fax:
(416) 338-0211; E-Mail: Domenic.Garisto@ttc.ca

SIGNATURE

Bruce Bowes, P.Eng.
Chief Corporate Officer

ATTACHMENTS

Attachment 1 - Confidential Attachment
Site Maps